

EXHIBIT A

Roxane Laboratories, Inc (Judy Waterer)
Chicago, IL

December 12, 2008

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL)
INDUSTRY AVERAGE WHOLESALE) MDL No. 1456
PRICE LITIGATION) Civil Action No.
-----X 01-12257-PBS

THIS DOCUMENT RELATES TO:)
United States of America ex)
rel. Ven-a-Care of the)
Florida Keys, Inc., et al.)
v. Boehringer Ingelheim)
Corp., et al., Civil Action)
No. 07-10248-PBS)
-----X

(CROSS-CAPTIONS APPEAR ON FOLLOWING PAGE)

VIDEOTAPED 30(b)(6) DEPOSITION OF ROXANE
LABORATORIES, INC., ROXANE LABORATORIES, INC.
n/k/a BOEHRINGER INGELHEIM ROXANE, INC.,
BOEHRINGER INGELHEIM PHARMACEUTICALS, INC., and
BOEHRINGER INGELHEIM CORPORATION by JUDY WATERER
DECEMBER 12, 2008

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

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1 A. I see where you're coming from.

2 MS. RIVERA: Hold on. Object to form.

3 Go ahead.

4 BY THE WITNESS:

5 A. Again, I will say that the term AWP and
6 the numbers that Roxane reflected as AWP were
7 reflective AWP, and that is not understood in the
8 industry to be the term that you're trying to
9 define it as. So if you're saying does AWP mean
10 something that it doesn't mean, the answer is no.

11 So in answer to your question -- I'm
12 trying to be as complete as I can.

13 BY MR. HENDERSON:

14 Q. Okay.

15 A. No, AWP does not mean -- I can't
16 remember the exact words that you used, but some
17 kind of actual average of prices to customers.
18 So the price that we reported did not mean that
19 definition.

20 Q. Okay. I wasn't asking you about the
21 meaning of AWP.

22 A. Mm-hmm.

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1 Q. I understand Roxane did report numbers

2 --

3 A. Mm-hmm.

4 Q. -- it termed as AWP's to First DataBank,
5 Medi-Span and Red Book; is that correct?

6 A. Yes.

7 Q. Okay. And my question to you is this:
8 Did those numbers that Roxane reported as AWP's,
9 did those numbers have any predictable
10 relationship to the prices that Roxane's drugs
11 were sold in the marketplace?

12 A. Again, the answer is no. But I must
13 say that it was not represented to be that.

14 Q. I understand that.

15 A. So trying to tie it to that.

16 Q. Okay.

17 A. So the answer is no, but it's almost --
18 the basis of the question is weird because it is
19 no, it didn't equal that, but nobody in the
20 industry thought it did. So it -- it -- it
21 didn't make sense -- the question doesn't make
22 sense so it's why I can't just give you a

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1 straight no.

2 Q. Well, if I asked you whether the prices
3 that Roxane reported to publishers for
4 publication --

5 A. Mm-hmm.

6 Q. -- related to the price of eggs at the
7 local market, could you answer that question yes
8 or no?

9 A. I would give you the same answer. I
10 would say no, it does not report to the price of
11 eggs, and no reasonable person would think that
12 it would.

13 Q. Okay. When you use -- said that the
14 industry understood that to be the case, how have
15 you -- how have you determined what the industry
16 understood?

17 A. I would have to say that the way we've
18 determined it is because we've never heard it
19 described as anything else. In many, many, many
20 years in the industry, it's been AWP has had a
21 recognized definition or meaning that did not
22 mean it was an actual, some kind of calculated

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1 average of prices in the marketplace. It was so
2 I guess entrenched and established as a known
3 definition in the marketplace that you didn't
4 really think about it. But if you were to think
5 about it, it wouldn't have made sense that
6 anybody would have thought that that's what it
7 was. It wouldn't have been rational.

8 Q. Well, when you say we thought of it in
9 this way, who are you speaking of?

10 A. Basically everybody in the industry
11 that I ever had contact with.

12 Q. And who is that?

13 A. Customers and people that I worked
14 with.

15 Q. Okay. The -- have you understood -- do
16 you understand that AWP is used by many entities
17 in Medicaid and Medicare programs, among others,
18 for purposes of reimbursing pharmacists for
19 dispensing pharmaceuticals to beneficiaries of
20 certain insurance plans?

21 A. I understand that AWP is one of -- is a
22 reference price that some reimbursers use for

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1 some drugs to tie their pricing to. But in my
2 experience, their reimbursement has always been
3 significantly less than AWP.

4 So going back to that, it would be
5 irrational if somebody is reimbursing a
6 pharmacist a percent off of AWP. I've seen in
7 the industry, I've been told in the industry that
8 it can range anywhere from like 10 to 40 percent
9 off of AWP. It would be irrational to think that
10 anybody doing that reimbursement would think that
11 that's the price that a customer paid for it,
12 that they would be willing to accept
13 reimbursement way below what their acquisition
14 cost was. So if any -- when I say it's
15 irrational, they had to know that AWP was not an
16 acquisition cost. If they believed it was an
17 acquisition cost, I would have to believe that
18 they would have set their pricing or their
19 reimbursement to be AWP plus some kind of fair
20 profit margin for the pharmacist that was
21 dispensing the product.

22 Q. Do you understand -- do you have an

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1 understanding, Ms. Waterer, as to whether or not
2 the Medicaid program as -- or the Medicaid -- let
3 me rephrase the question.

4 Do you have an understanding that state
5 Medicaid programs seek to determine to estimate
6 an acquisition cost as part of their methodology
7 for reimbursing pharmacists?

8 A. No. And if they wanted to get that, it
9 wouldn't be very difficult for them to have that
10 information.

11 Q. Okay. So it's your belief that states
12 do not seek to use estimated acquisition costs as
13 part of their reimbursement objective?

14 A. I think that's not exactly what my
15 understanding of your question was.

16 Q. Okay.

17 A. Your question was do I have knowledge
18 that the states are trying to use acquisition
19 costs as the basis of their reimbursement. I
20 don't have enough information or knowledge about
21 what the states are doing. I sell products. I
22 don't get reimbursed for products. So I don't

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1 A. I don't deal with reimbursement. Our
2 company does not deal with reimbursement.

3 Q. So -- okay. And if -- if average
4 wholesale prices have no -- is it your testimony
5 that average wholesale price is a term that has
6 no meaning other than something that people use
7 as a benchmark for payment?

8 A. It's a reference price used in the
9 industry. It's commonly used, our understanding
10 is by a number of different organizations to tie
11 their reimbursement to.

12 Q. All right. And is it -- is it your
13 view, Ms. Waterer, that Roxane or any other
14 company is free to report whatever figure they
15 wish as an average wholesale price?

16 A. Wow. I don't -- I don't -- I don't
17 even know how to respond to that. I can tell you
18 how we do set our AWP and that we set it
19 consistent to the industry. I don't think that
20 we're out there trying to come up with some kind
21 of low pricing or reinvent the term. We know on
22 our multisource products that other companies use

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1 the same type of pricing scenario that we do.
2 It's publicly available. It's published. And
3 it's virtually an industry standard on a generic
4 product that the AWP is typically set at 10
5 percent off of the brand's AWP at launch. So I -
6 - I guess someone could set it wherever they
7 want, but I don't know that that happens in the
8 industry.

9 Q. You said that it's the industry
10 standard to set AWP at 10 percent off the brand.
11 Are you referring to the AWP of the brand
12 product?

13 A. Yes, that that is a common formula that
14 we see lots of people -- it's very common to see
15 that when you launch a product, that that's where
16 the pricing ends up.

17 Q. Okay. Is that how Roxane typically
18 sets the AWP for its generic drugs?

19 A. When we launch a new generic drug, our
20 most common thing to do is take 10 percent of the
21 brand's AWP at launch. There are instances when
22 that does not occur.

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1 Q. And is that true regardless of where
2 Roxane sets its launch prices at which it sells
3 to customers?

4 MS. RIVERA: Hold on. Hold on. I'm
5 going to object. I mean, how Roxane sets its
6 prices and its practices for setting its prices
7 is not one of the topics that Ms. Waterer is here
8 to talk about. One of your topics is how the
9 industry sets prices for generic drugs and
10 Roxane's understanding of how the industry sets
11 prices. She's testified on numerous occasions
12 how Roxane goes about setting its prices and what
13 its methodologies are for that. So I'll give you
14 a little leeway on some of the basic questions,
15 but I don't want to go down a whole long line of
16 questioning about what Roxane's specific
17 practices are for how they set their prices
18 because it's not part of what we're here to talk
19 about today.

20 MR. HENDERSON: Fair enough. And I'll
21 try to avoid repeating prior questioning. At the
22 same time, I'm not limited by the topics. They

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1 Q. Okay. Do you have any knowledge,
2 first-hand knowledge about how companies who sell
3 loraz- -- al -- I'm sorry -- alprazolam set their
4 AWP's at the time of launch?

5 A. No.

6 Q. What about isosorbide, does Roxane sell
7 that?

8 A. That doesn't sound familiar.

9 Q. Do you have any knowledge about how
10 companies that sell generic isosorbide set their
11 AWP's at the time of launch?

12 A. No, I would have no reason to look into
13 it.

14 Q. And with regard to the industry
15 practice about setting AWP's at the time of
16 launch, are there other individuals at Roxane who
17 you know to share your belief about that industry
18 practice?

19 A. I believe if you talk to anybody in
20 sales or marketing at Roxane, they would say the
21 same thing. I haven't had that discussion with
22 them, but it's common knowledge.

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1 Q. Okay. But you have not had any
2 specific discussions with others on that topic?

3 A. Not that I recall.

4 Q. Do you have -- we've covered -- I'm
5 going to move on to topic No. 4. And part of
6 that we've covered.

7 MS. RIVERA: I was going to say.

8 MR. HENDERSON: Quite a bit of it we've
9 covered.

10 BY MR. HENDERSON:

11 Q. There is a second piece to that topic
12 regarding any industry practice concerning
13 subsequently changing or not changing the
14 reported or published AWP after the time of
15 launch.

16 A. Mm-hmm.

17 Q. And do you have an understanding about
18 any practice, industry practice about the
19 changing or not changing the AWP after the time
20 of launch?

21 A. After the time of launch?

22 Q. Yes.

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1 A. For a generic product, a competitive
2 generic product?

3 Q. Yes.

4 A. It's typically not changed.

5 Q. Okay. Now I'll ask you questions about
6 how do you know that?

7 A. Same way we know that AWP is typically
8 set at 10 percent, because we don't notice that
9 it changes and nobody brings it to our attention
10 that it changes. And quite frankly, if our
11 pricing -- if everybody else changed and we
12 didn't, eventually a customer would bring it to
13 our attention based on what happened with
14 Furosemide. So we have no reason to believe that
15 we're not still in line with the industry.

16 Q. And do you know -- do you have any
17 understanding as to why that practice exists to
18 the extent you know about it?

19 A. I haven't really questioned it. But
20 based on what happened with Furosemide, it's
21 pretty clear if your pricing gets out of line
22 with everyone else in the industry that you can

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1 be disadvantaged or advantaged relative to your
2 competition.

3 Q. There have been occasions when AWP's
4 own generic products have increased; is that
5 correct?

6 A. Generic products in general?

7 Q. In your experience.

8 A. I'm not sure what you're asking.

9 MS. RIVERA: Object to form.

10 THE WITNESS: Are you asking Roxane
11 products?

12 BY MR. HENDERSON:

13 Q. Yes, let's stick to Roxane products for
14 now?

15 A. There are quite a few times when AWP's
16 increase on our Roxane product line, yes.

17 Q. Okay. Are those exceptions to the
18 general practice that you just stated to me?

19 A. Generally they're not an exception.
20 What I had stated to you before, I very clearly
21 designated that that was for a competitive
22 generic product in that we have products that

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1 A. I be- -- yes -- or as a -- the question
2 was my understanding?

3 Q. Yes.

4 A. So it's specific to my understanding.

5 Q. Okay. Is it fair to say that informs
6 the company's understanding, as well?

7 A. It's a part of it. I'm not the only
8 employee in the company.

9 Q. Okay.

10 MR. HENDERSON: Let's see. We got
11 started a little late so I think we'll run a
12 little bit later. I'll go ahead and start topic
13 No. 5.

14 MS. RIVERA: Okay.

15 BY MR. HENDERSON:

16 Q. Just take a minute to read topic No. 5
17 to yourself. There are two parts to this topic.
18 One relates to AWP prices and the other relates
19 to WACs. I'll start with the AWPs, AWP part of
20 this topic.

21 A. Okay.

22 Q. Does Roxane have any belief regarding

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1 whether the United States government approved of
2 or acquiesced in Roxane's practice of causing the
3 publication of AWP's that were higher than the
4 actual average of wholesale prices at which date
5 Roxane's drugs were sold in the marketplace?

6 A. First of all, I have to break that down
7 a little further, in that there's an implication
8 that Roxane caused something to be published. We
9 provide pricing. Somebody else publishes it. We
10 don't require them to publish it. We don't ask
11 them to publish it. We're not compensating for
12 them to publish it. So I'm not comfortable with
13 the clause that says we cause it to be published.

14 Then the other part is, is it our
15 understanding that the U.S. government approved
16 of or acquiesced that the AWP was higher than the
17 average actual wholesale price, if we're going to
18 take that. The simple fact that the government
19 bases its reimbursement on that and that the
20 government would have every reason to know that
21 that price was not defined in the industry or in
22 any general practice as some kind of an actual

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1 average of wholesale prices, I don't even know to
2 whom those prices would be.

3 So I would have to say based on the
4 fact that the government uses it, continues to
5 use it, it's a generally understood term and that
6 since they use it and they absolutely have to
7 understand what the term is, that they know very
8 well that it's a price that is not some kind of
9 defined actual average wholesale price to some
10 undefined other person. So that's why we believe
11 that the government would know that.

12 Q. Okay. You said that you're not
13 comfortable with the piece of this topic
14 suggesting that Roxane caused the publication of
15 certain AWP's. Has Roxane -- Roxane has reported
16 AWP's to the publishers, First DataBank and Red
17 Book and Medi-Span; is that correct?

18 A. Yes.

19 Q. Has Roxane had an expectation that the
20 AWP's it reported to those publishers would be the
21 AWP's that got published?

22 A. It was Roxane's understanding that the

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1 different pricing compendia reported AWP's.

2 Q. Is it -- was it -- has it been Roxane's
3 understanding that the different publishing
4 compendia would report the AWP's that Roxane --
5 I'm sorry. Let me state that again.

6 Has it been your understanding as a
7 representative of Roxane that the AWP's that
8 Roxane reported to the publishers would be, in
9 fact, published by them?

10 A. That was our understanding, yes.

11 Q. And has Roxane reported its AWP's with
12 the expectation that those would be the AWP's that
13 would be published?

14 A. Yes.

15 Q. And with regard to the government
16 knowledge, what -- are there -- are there any
17 documents that you believe show that the
18 government has approved or acquiesced in the
19 practice of having AWP's published that are higher
20 than any actual market prices?

21 A. Okay. I don't believe that the
22 government has ever told us that they approve or

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1 A. My --

2 Q. -- information for purposes of
3 determining reimbursement?

4 A. My understanding of the confidentiality
5 restrictions surrounding AMP are that the
6 pharmaceutical manufacturers do not want that
7 shared with customers or competitors. Beyond
8 that, I'm not aware of any confidentiality
9 agreements.

10 In addition to that, the states would
11 very, very easily be able to calculate AMP
12 literally on the back of an envelope if they
13 wanted to. They get their rebate percent and
14 they know how many units they sold. So if
15 they're getting --

16 Q. I think I'm asking about the
17 confidentiality issue, if the --

18 A. To my knowledge, there's nothing that
19 prohibits the Federal Government from sharing it
20 with a state. The only thing that to my
21 knowledge I'm aware of has to do with the fact
22 that if it's shared, it has to be in such a

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1 manner that it would maintain confidentiality in
2 terms of protecting our companies from disclosing
3 confidential information to competitors and
4 customers.

5 Q. When did you -- let me start with you
6 personally --

7 A. Mm-hmm.

8 Q. -- but also in your capacity as a
9 designee of Roxane.

10 When did you -- when, if at any time,
11 did you form the belief that AMP data is
12 something that states could use for determining
13 reimbursement?

14 MS. RIVERA: Object to form.

15 BY THE WITNESS:

16 A. I wasn't suggesting that states use it.
17 What I was saying is that they would have access
18 to that information, either directly if the
19 government chose to share it with them under a
20 confidentiality agreement or indirectly by doing
21 a simple calculation on the rebates that they get
22 every quarter from us.

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1 BY MR. HENDERSON:

2 Q. Well, if they have access to it but
3 can't use it, how would that substitute for --
4 how would that provide them with information
5 about acquisition costs to use for purposes of
6 reimbursement?

7 MS. RIVERA: Object to form.

8 BY THE WITNESS:

9 A. I don't understand what about can't use
10 it. What they can't do is share it with
11 competitors --

12 BY MR. HENDERSON:

13 Q. Okay.

14 A. -- or share it with our other
15 customers.

16 Q. But you do think they could use it for
17 purposes of determining reimbursement?

18 A. I think that --

19 MS. RIVERA: Object to form.

20 BY THE WITNESS:

21 A. -- they could use whatever information
22 they choose to to set their reimbursement

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SIGNATURE OF THE WITNESS

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JUDY WATERER

Subscribed and sworn to and before me
this _____ day of _____, 20____.

Notary Public

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